

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 8, 2006

STATE OF TENNESSEE v. ARIKO T. HALIBURTON

**Direct Appeal from the Criminal Court for Davidson County
No. 2004-A-808 Mark J. Fishburn, Judge**

No. M2005-01885-CCA-R3-CD - Filed November 13, 2006

The defendant, Ariko T. Haliburton, was convicted of attempted second degree murder and received a sentence of eighteen years as a Range II, Multiple Offender. On appeal, the defendant challenges the sufficiency of the convicting evidence. Following our review of the parties' briefs and the applicable law, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which James Curwood Witt, Jr. and NORMA MCGEE OGLE, JJ., joined.

Michael A. Colavecchio, Nashville, Tennessee, for the appellant, Ariko T. Haliburton.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Kathy Morante, Russell Thomas and James Todd, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

The following evidence was presented at the trial. George Carter testified that on December 15, 2003, the defendant and the victim, Korey Polk, were involved in a physical altercation. During this fight, the victim shot the defendant in the leg. The defendant hobbled away and the victim went to find the defendant so he could "get rid of him." Carter then went to his car, found the defendant, and took him to the hospital. While at the hospital, the police were summoned. However, the defendant did not tell the police who shot him. Instead, the defendant told Carter that he would take care of the victim himself.

Carter testified that four days later on December 19, 2003, the defendant accompanied Carter to a house where the victim was staying in order to play video games. Upon arrival, a woman known

as “Mama” told Carter and the defendant that the victim was in the house. As they entered the house, Carter heard a loud “BOOM” and fell to the floor thinking that he had been shot. At this time, Carter noticed that the victim fell to the floor “real hard” and hit his head. Carter then turned and saw the defendant running away, limping. When questioned by police, Carter told them he did not know who shot the victim. However, he later told the police the defendant shot the victim.

Minnie Thomas testified that on December 19, 2003, she was sitting by the window inside the apartment with the victim. They were getting high on crack cocaine together when someone knocked on the door. When she peeked out, she saw Carter. Thomas also saw the defendant; however, before she could warn the victim, he had already opened the door. As soon as the victim opened the door, Thomas saw the defendant reach over Carter’s shoulder and shoot the victim. Thomas was shocked and could not move, but she saw the defendant take off around the side of the apartment building.

The victim testified that he suffered from memory loss as a result of being shot. He also stated that he suffered seizures. Several police officers testified. One officer testified that he observed the victim lying on the floor next to the front door of the apartment. The victim appeared to have suffered a gunshot wound to his head. Another officer testified that a hat, shirt, and spent shell casing were found at the crime scene.

Based upon the evidence presented, the jury found the defendant guilty of attempted second degree murder. Thereafter, he was sentenced to eighteen years as a Range II, Multiple Offender in the Department of Correction.

ANALYSIS

On appeal, the defendant argues that the evidence was insufficient to support his conviction for attempted second degree murder. Upon review of this issue, we reiterate the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to this court why the evidence will not support the jury’s verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no “rational trier of fact” could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); Tenn. R. App. P. 13(e). In contrast, the jury’s verdict approved by the trial judge accredits the state’s witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weight or re-evaluate the evidence. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *Id.*

Second degree murder is the "knowing killing of another." Tenn. Code Ann. § 39-13-210(a)(1). Criminal attempt is explained as follows:

- (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
 - (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believes them to be;
 - (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
 - (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Tenn. Code Ann. § 39-12-101. In other words, criminal attempt requires the existence of the same culpability required for the attempted crime, and an act in furtherance of the attempted crime. *See Wyatt v. State*, 24 S.W.3d 319, 323 (Tenn. 2000).

Upon review, we note that the defendant's sufficiency argument essentially amounts to a challenge to the jury's credibility determinations. Thus, we reiterate, it was the jury's prerogative to accredit witness testimony and weigh the evidence. In the instant case, the proof at trial clearly established that after an altercation between the victim and the defendant, the victim shot the defendant in the leg. At the hospital, the defendant did not cooperate with the police and later told Carter that he would take care of the victim himself. Four days later, the defendant accompanied Carter to the apartment where the victim was staying. After the victim opened the door, the defendant pointed a gun over Carter's shoulder and shot the victim. The jury, by its verdict accredited the testimony of George Carter and Minnie Thomas despite some inconsistencies in their statements. Viewing the evidence in a light most favorable to the state, we conclude that a rational trier of fact could find beyond a reasonable doubt that the defendant committed the offense of attempted second degree murder. Accordingly, the defendant is not entitled to relief on this issue.

CONCLUSION

Based upon the foregoing review, we affirm the judgment of the trial court.

J.C. McLIN, JUDGE